

STATE OF INDIANA



INDIANA UTILITY REGULATORY COMMISSION
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March 31, 2004

RECEIVED & INSPECTED

APR 2 2004

FCC - MAILROOM

Marlene H. Dortch
Office of the Secretary
FCC
445 - 12th St, SW
Washington, DC 20554

Irene Flannery
Vice President
High Cost & Low Income Division
Universal Service Admin Co.
2120 L St, NW, Ste 600
Washington, DC 20027

Re: CC Docket 96-45, USF Certification as Required by 47 C.F.R. § 54.314
for NPCR, Inc. d/b/a Nextel Partners

Dear Ms. Dortch and Ms. Flannery:

On March 17, 2004, the Indiana Utility Regulatory Commission (IURC) issued an Order in Cause No. 41052-ETC 43 approving the request by NPCR, Inc. d/b/a Nextel Partners to be designated an Eligible Telecommunications Carrier. A copy of that Order is enclosed. Nextel Partners, a wireless carrier, was authorized to serve as an ETC in selected study areas of rural telephone companies. Those study areas are designated in Petitioner's Exhibit 7, a copy of which is included.

On March 25, 2004, Nextel Partners filed with the Commission a completed application seeking certification from the IURC that Nextel Partners is eligible to receive federal high-cost loop support. A copy of that completed application is enclosed.

On March 31, 2004, the IURC issued an Order in Cause No. 42067 HLS-43 declaring Nextel Partners eligible to receive federal high-cost loop support. A copy of that Order is enclosed.

Based on the IURC's March 31, 2004 Order, and on behalf of the IURC, I now certify to the FCC and USAC that NPCR, Inc. d/b/a Nextel Partners will be using federal support (which includes high cost loop support, local switching support, high cost support received pursuant to the purchase of exchanges, high cost model support, and hold harmless support) only for the provision, maintenance, and upgrading of facilities and services for which the support is intended, consistent with Section 254 (e) of the Communications Act.

This certification applies only for support provided in calendar year 2004.

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If you require further assistance, please call me at (317) 232-2716.

Sincerely,

A handwritten signature in black ink, reading "Nancy E. Manley". The signature is fluid and cursive, with the first letters of each word being capitalized and prominent.

Nancy E. Manley
Secretary to the Commission

Enclosures:

Order in Cause No. 41052-ETC 43, approved March 17, 2004

Petitioner's Exhibit 7, detailing affected rural study areas

IURC Application Form for high cost funding certification

Order in Cause No. 42067 HLS-43, approved March 31, 2004

cc Nextel Partners
 Office of Utility Consumer Counselor

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

ORIGINAL

APR 2 2004

CAUSE NO. 41052-ETC-43

APPROVED: MAR 17 2004

IN THE MATTER OF THE DESIGNATION)
OF ELIGIBLE TELECOMMUNICATIONS)
CARRIERS BY THE INDIANA UTILITY)
REGULATORY COMMISSION PURSUANT)
TO THE TELECOMMUNICATIONS ACT OF)
1996 AND RELATED FCC ORDERS, AND IN)
PARTICULAR, THE APPLICATION OF)
NPCR, INC. d/b/a NEXTEL PARTNERS)
TO BE DESIGNATED)

BY THE COMMISSION:

David E. Ziegner, Commissioner

Lorraine Hitz-Bradley, Administrative Law Judge

On April 21, 2003, NPCR, Inc. d/b/a Nextel Partners ("NPCR" or "Petitioner") filed its Verified Petition for Designation as an Eligible Telecommunications Carrier ("ETC"). By its petition, Petitioner requested the Indiana Utility Regulatory Commission ("Commission") to designate it as an ETC pursuant to 47 U.S.C. § 214(e), for the areas described in the petition.

Pursuant to notice duly given as provided for by law, a hearing was held at 9:30 a.m. on Thursday, October 2, 2003, in Room TC 10 of the Indiana Government Center South, Indianapolis, Indiana 46204. Prior to that hearing, Clay County Rural Telephone, Inc. ("CCRTC"), Indiana Exchange Carriers Association, Inc. ("INECA"), Smithville Telephone Company ("Smithville") and Verizon North, Inc. and Contel of the South, Inc. d/b/a Verizon North Systems ("Verizon") petitioned to intervene in these proceedings. The requested interventions were granted.

At the hearing Petitioner offered its Exhibit 1 (a copy of its Verified Petition), Exhibit 2 (Prefiled Direct Testimony of Don Wood), Exhibit 3 (Prefiled Direct Testimony of Scott Peabody), Exhibit 4 (Prefiled Rebuttal Testimony of Don Wood), Exhibit 5 (Prefiled Rebuttal Testimony of Scott Peabody) and Confidential Exhibit 6, as Petitioner's case-in-chief, which Exhibits were admitted into the record. The Petitioner's witnesses were cross-examined by all parties to these proceedings. CCRTC offered CCRTC's Exhibit 1 (Prefiled Direct Testimony of its witness Brad Welp) and Exhibit 2 (Petitioner's Response to CCRTC's data request), which were admitted into the record. CCRTC's witness was cross-examined by all parties. INECA offered INECA's Exhibit 1 (Prefiled Testimony of its witness Bruce Hazelett) which was admitted into the record. INECA's witness was cross-examined by all parties. The Indiana Office of Utility Consumer Counselor ("OUCC") offered OUCC's Exhibit 1 (the Prefiled Testimony of its witness Ronald Keen) which was admitted into the record. The OUCC witness was cross-examined by all parties. Smithville and Verizon did not submit any Exhibits or offer any testimony. The Presiding Officers also permitted the Petitioner to file a late filed Exhibit [Petitioner's Exhibit 7 (Late Filed)] revising the areas for which it is seeking eligible

telecommunication carrier status, which late filed Exhibit was further revised and admitted as Petitioner's Late Filed Exhibit 7 (Late Filed Revised). The Presiding Officers also admitted Petitioner's Exhibit 8 (Late Filed) and Exhibit 9 (Late Filed), which documents were requested by the Presiding Officers at the hearing.

The Commission, having examined all of the evidence of record and being duly advised in the premises, now finds as follows:

1. **Notice and Jurisdiction.** Proper, legal and timely notice of the hearing in this Cause was given and published by the Commission as provided for by law. The proofs of publication of the notice of the hearing have been incorporated into the record of this proceeding. Pursuant to the Telecommunications Act of 1996, 47 U.S.C. § 151, *et seq.* (the "Act"), and applicable Federal Communications Commission ("FCC") rules in 47 C.F.R. §§ 54.201 and 54.203, this Commission is authorized to designate ETCs, thereby enabling those so designated to apply for universal service support under 47 U.S.C. § 254. The Commission, therefore, has jurisdiction over the parties and subject matter of this Cause.

2. **Petitioner's Characteristics.** Petitioner is a "Telecommunications Carrier", as defined by 47 U.S.C. § 153(44). The specific areas for which Petitioner requests designation as an ETC were identified in Attachment 1 attached to Petitioner's Verified Petition (Exhibit 1). Attachment 1 was revised and the final designated areas for which Petitioner seeks ETC designation are as set forth in Petitioner's Exhibit 7 (Late Filed Revised). Petitioner's evidence indicates that Petitioner is a provider of wireless services, authorized by the FCC to serve in Indiana. Petitioner's service is commercial mobile radio service ("CMRS"), and thus regulated by the FCC. Petitioner provides Nextel services to small and rural markets within Indiana. Petitioner's business plan is to offer consumers in small and rural markets the same services, at the same rates, that are offered by Nextel Communications in urban markets. Petitioner was formed in 1998 and began providing service in Indiana in 2001. During that time, Nextel Partners placed 97 cell sites into service in Indiana, representing a network investment of \$25-30 million.

3. **Requirements for ETC Designation.** In Cause No. 40785, this Commission adopted the FCC's original eligibility requirements for designation of ETCs in the State of Indiana. Accordingly, each Indiana ETC receiving federal universal service support is required by FCC Rule 54.101(b) to offer the following nine universal services or functionalities, which are described more fully in Rule 54.101(a):

- a. Voice grade access to the public switched network;
- b. Local usage;
- c. Dual tone multi-frequency signaling or an equivalent;
- d. Single-party service or its functional equivalent;
- e. Access to emergency services;
- f. Access to operator services;
- g. Access to interexchange service;
- h. Access to directory assistance;
- i. Toll limitation for qualifying low-income customers.

In addition to offering the above nine universal services, ETCs are required by FCC Rules 54.405 and 54.411 to offer qualifying low-income customers both "Lifeline" and Link Up" programs as a condition precedent to receiving federal universal service support. FCC Rule 54.201(d)(2) also requires ETCs receiving federal universal service support to publicize the availability of the nine universal services and the Lifeline and Link Up programs and the charges therefore using media of general distribution. Pursuant to this Commission's November 5, 1997 Order in Cause No. 40785, carriers seeking ETC designation in Indiana must also file proposed Lifeline/Link Up tariffs and boundary maps depicting the areas for which ETC designation is sought.

Finally, because NPCR seeks to be designated as an additional ETC in rural service areas in Indiana, this Commission must also make a specific determination as to whether the public interest would be served by designating more than one ETC in the specified rural service areas. Specifically, the federal Telecommunications Act provides that:

[U]pon request and consistent with the public interest, convenience, and necessity, the State commission may, in the case of an area served by a rural telephone company, and shall in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State commission, so long as each additional requesting carrier meets the requirements of Paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest.

47 U.S.C. § 214(e)(2).

This Commission has not yet entered an order interpreting or applying the above "public interest" test to any request for designation as an additional, competitive ETC in rural service areas or in any prior generic proceedings. Accordingly, this case, and another pending case (IURC Cause No. 41052-ETC-45, filed by the Centennial companies) are cases of first impression in Indiana.

4. Evidence Admitted

A. NPCR Testimony

The Petition, which was admitted into the record as Petitioner's Exhibit 1 and incorporated herein by reference, states that NPCR provides all nine of the universal services or functionalities required by FCC Rule 54.101(b). The Petition also states that NPCR will provide Lifeline and Link Up discounts to qualifying low-income customers as required by FCC Rules 54.405 and 54.411 if it is designated as an ETC in this proceeding.

NPCR also presented evidence to support its compliance with each of the elements required under federal law for designation as an ETC. At the hearing, NPCR offered its Exhibit 1 (a copy of its Verified Petition), Exhibit 1A (a copy of its amended petition), Exhibit 2

(Prefiled Direct Testimony of Don Wood), Exhibit 3 (Prefiled Direct Testimony of Scott Peabody), Exhibit 4 (Prefiled Rebuttal Testimony of Don Wood), Exhibit 5 (Prefiled Rebuttal Testimony of Scott Peabody) and Confidential Exhibit 6 as Petitioner's case-in-chief, which exhibits were admitted into the record.

On August 1, 2003, NPCR prefiled testimony for its two witnesses, Scott Peabody and Don J. Wood. Mr. Peabody, Director in NPCR's Engineering Department, testified that NPCR was a "telecommunications carrier" as defined under the Act and is a provider of Commercial Mobile Radio Service ("CMRS") in various rural "Economic Areas" found in Indiana. NPCR is a separate corporation from Nextel Communications, although the latter is the largest shareholder of NPCR. Mr. Peabody made clear that the ETC designation NPCR seeks is solely for federal USF purposes. Although altered after the application was filed and after the close of the hearing in this proceeding, NPCR seeks designation in 10 RTC areas in the State of Indiana where NPCR's FCC license covers the entire service area of each such company.

Mr. Peabody testified as to the FCC requirements regarding ETC designation, noting that the FCC has made clear that both wireless and wireline entities meeting the threshold requirements for ETC designation are eligible to seek such status. Mr. Peabody outlined the services and functionalities required to be offered by ETCs under the applicable FCC rule, 47 C.F.R. §54.101(a). Mr. Peabody indicated that NPCR could provide each of the FCC-listed services and/or functionalities except for toll limitation service to qualifying low income consumers. According to Mr. Peabody, toll limitation was "linked" to Lifeline service for low income consumers. He indicated that voice grade access to the public switched telephone network was provided through interconnection agreements that NPCR had with local telephone companies, noting specifically Ameritech and GTE. Further, Mr. Peabody indicated that, while the FCC had not established a minimum amount of local usage required to be included in an ETC's universal service offering, he believed NPCR complied with the requirement because each of the offerings that NPCR makes available includes local usage. With respect to interexchange services, Mr. Peabody testified that each NPCR customer has the ability to make or receive toll calls through arrangements that NPCR has made with certain interexchange carriers ("IXCs") or through the ability of the customer to dial the access code of the IXC he/she wanted to use. Mr. Peabody also discussed the remaining elements in the FCC's list of universal service.

To support its application, and although some of the attachments/exhibits were subsequently modified, Mr. Peabody attached the then current service plans of NPCR, "detailed maps" of NPCR's coverage area overlaid on the affected RTCs' Study Areas, and a separate map with respect to the Verizon exchanges. Mr. Peabody testified that NPCR is not required to show that it can serve every customer in the requested ETC designated area. Rather, it must comply with a "reasonable request for service" throughout such area once ETC designation is granted.

With respect to advertising its universal service offering, Mr. Peabody indicated that NPCR will advertise the availability of its universal service offering and the corresponding charge in a manner that "fully informs the general public" located within the geographic area covered by its application. This advertising would continue to be in conjunction with Nextel Communications, and would advertise via general printed and electronic media, point of sale

locations and over the Internet. Mr. Peabody included a copy of NPCR's planned advertising as an exhibit to his testimony.

Because certain of the areas covered by the application were for areas served by RTCs, Mr. Peabody testified to the specific additional requirement that the Federal Act requires, *i.e.*, that the state commission must find that such additional ETC designation is in the "public interest." Mr. Peabody, relying on FCC directives, indicated that the Commission should presume in its analysis that "competition benefits consumers, and that citizens throughout the state are entitled to the benefits of competitive universal service." Moreover, he indicated that the Commission should look to "whether consumer benefits will be outweighed by demonstrated adverse impacts on consumers resulting from the designation." Thereafter, Mr. Peabody explained his views as to why NPCR met these standards, relying upon his observations that competitive service providers are "hard to find" in rural areas and that such areas lack choice of providers. Citing the need to provide a "level playing field" and that wireless providers are the "only real chance at bringing meaningful competition to these service areas," Mr. Peabody indicated that access to federal USF disbursements will allow NPCR to expand its network throughout the state and otherwise allow CMRS infrastructure to bring universal service and advanced services to rural consumers. Moreover, he suggested that, since NPCR provides mobile service, NPCR's service is more "universal" than the telephone companies.

In closing, Mr. Peabody testified to the level of service that NPCR provides vis-à-vis other wireless service providers. According to Mr. Peabody, if NPCR cannot meet "its customers' expectations for customer service, the customers vote with their feet" with respect to their mobile communications needs. Further, Mr. Peabody indicated that ETC designation will facilitate the continued role of NPCR in providing communications services to a variety of customers, including public schools, libraries, and local and state government agencies, specifically law enforcement. Thus, Mr. Peabody urged the Commission to designate NPCR as an ETC.

Mr. Wood testified on behalf of NPCR regarding the "public interest" aspect of the NPCR petition. Relying upon both his background as a consultant on economic and regulatory matters and his telephone company and IXC industry experience, Mr. Wood indicated he was familiar with the application of universal service mechanisms at both the state and federal levels. With respect to the public interest determination, Mr. Wood noted that he believed that RTCs involved in proceedings in other states had sought to "significantly broaden the scope of review and have attempted to put competition on trial." Such efforts were, in Mr. Wood's view, a distraction since the analysis should focus on the "facts of [NPCR's] Petition." Accordingly, Mr. Woods opined that designating NPCR as an additional ETC in the affected RTCs' service areas would have both short term and long term benefits.

With respect to the short term, Mr. Wood testified consumers would have a choice of technology and suppliers using different technology, along with a "broader array" of services and pricing. Long-term, according to Mr. Wood, consumers would benefit from the "competitive market forces" that he suggested create incentives for such carriers to be "more efficient and responsive to customer needs." Mr. Wood relied upon FCC pronouncements to support his

conclusions, stating that the FCC has rejected the suggestion that an additional ETC would “reduce investment incentives, increase prices, or reduce service quality of the [Incumbent Local Exchange Carrier (“ILEC”)].” Similarly, Mr. Wood cited language regarding what the FCC opined to be benefits of competition.

Mr. Wood also testified that he saw two specific reasons for allowing competitive alternatives in rural areas. First, he believed that such alternatives were important for rural economic development, based on business relocation decisions regarding the availability of telecommunications services in an area. Second, he testified that the “availability of affordable and high-quality wireless service is extremely important in rural areas for health and safety reasons.” Mr. Wood testified that NPCR offers services that benefit consumers, particularly options and choice based on calling patterns and calling frequency, along with the “greater access to the personal and public safety benefits of wireless services.” Mr. Wood also cited to a court ruling that the consumers, not providers, are the focus of the benefits of universal service. As such, Mr. Wood testified that the designation of NPCR as an ETC is in the public interest.

B. OUCC Testimony

Ronald L. Keen, the OUCC’s Director of its Telecommunications Division, presented the Public’s evidence through his September 15, 2003 prefiled testimony, which was admitted into evidence

Mr. Keen generally reviewed the legal basis for designating ETCs and provided background on ETC designations previously made by the Commission. Mr. Keen also identified issues that the OUCC believed should be resolved by the Commission before designating multiple ETCs in areas of Indiana served by RTCs. Mr. Keen recommended that the Commission defer a final ruling in this Cause until the Commission had completed a general investigation and issued an order providing guidance to common carriers that might decide to seek designation as additional landline or wireless ETCs in an RTC’s service area.

Mr. Keen’s overview of background information on ETC designations reflected that Indiana’s ILECs were initially the only carriers to apply for ETC designation in Indiana. However, Mr. Keen noted that one competitive local exchange carrier (“CLEC”), Hancock Communications, Inc., applied for and received ETC status for areas outside its affiliated ILEC’s service territory in Cause No. 41052-ETC-42. Mr. Keen further noted that, since Hancock’s CLEC ETC case, only a few additional requests for ETC status have been filed with the Commission, including Petitioner’s request that is currently under review in this Cause and the Centennial Communications case (41052-ETC-45). Both of these requests, according to Mr. Keen, involved applications by wireless carriers to be designated as additional ETCs in areas of Indiana already served by the rural Local Exchange Carriers (“RLECs.”)

Mr. Keen identified several policy issues that the OUCC believed are relevant to the Commission’s review of designating a second ETC in areas currently served by RTCs. Mr. Keen expressed the OUCC’s concern that designating additional ETCs within the areas served by RTCs could result in the USF fund growing significantly, creating higher funding obligations, and/or higher end user USF surcharges or, in the absence of a surcharge, higher basic rates to

cover the cost of providing service. According to Mr. Keen, the primary interest of universal service is to ensure the “ubiquitous availability of quality telephone services in rural service areas” that are “comparable to services provided in urban areas at comparable and affordable rates.” The low population densities in rural areas, in Mr. Keen’s view, generally meant longer distances between service locations, increasing the cost of providing service in those areas. He indicated that federal USF disbursements were intended to keep end user rates affordable despite those higher costs. Thus, according to Mr. Keen, if existing rural ETCs lose large numbers of customers to new carriers designated as additional ETCs in the same rural service areas, it might result in higher end user rates or higher universal service funding requirements, a result that could harm, rather than further, universal service goals. Mr. Keen recognized the difficult public interest task assigned to this Commission – “on the one hand, promoting competition” that will offer “additional and improved service options to rural consumers,” while on the other hand, keeping local telephone service rates in rural areas at levels that are “fair, reasonable, just, affordable, and comparable to rates charged in urban areas for the same or comparable telecommunication services.”

Mr. Keen also identified specific concerns that the OUCC had with respect to NPCR’s service offering. Mr. Keen explained that NPCR was not offering at least one flat rate local service offering with unlimited local calling, and was not offering equal access (*i.e.*, toll presubscription) to toll providers. Mr. Keen testified that he was concerned about the comparability of NPCR’s local usage plans with those of the ETCs currently serving in the areas where NPCR seeks designation. Mr. Keen also expressed concerns with respect to quality of service.

Mr. Keen indicated that, in designating an additional ETC, the Commission should consider what consumers view as a minimum service standard, augmented by technology-specific additions. The OUCC believed an ETC designation carries with it the obligation to meet or exceed service provision and service quality requirements and expectations. Based on the lack of facts in the record, Mr. Keen did not believe that NPCR had demonstrated that the public interest would be served by its designation as an additional ETC in the various RTCs’ service areas.

Because the application also raised far-reaching issues, Mr. Keen suggested that the Commission conduct a general investigation regarding additional ETC designations in RTCs’ service areas prior to granting any request for such designation. Specifically, Mr. Keen identified thirteen specific policy issues that he believed should be addressed as part of such proceeding by the Commission. These issues include:

1. What factors should be considered in determining whether the public interest would be served by granting ETC status to multiple carriers in any of Indiana’s rural service areas;
2. Whether competitive service options would increase in any meaningful way as a result of granting ETC status to multiple telecommunications carriers in rural service areas;

3. Other states' actual experience after granting ETC status to multiple telecommunications service providers in rural service areas;
4. Initiatives taken in other states to promote or delay the granting of ETC status to multiple providers in rural service areas;
5. Whether any areas in Indiana that are currently served by rural ILECs/ETCs lack access to dependable basic, enhanced, or advanced broadband land-line telecommunication services;
6. Whether any areas in Indiana that are currently served by rural ILECs/ETCs lack access to dependable telecommunications service;
7. Whether Indiana's current ETC qualification requirements are adequate to safeguard the public interest, or whether Indiana should adopt generic guidelines for addressing public interest concerns when multiple Indiana common carriers seek ETC status in rural service areas;
8. The impact of designating multiple ETCs in rural service areas where customers have multiple telephone lines at a given service location;
9. The rates currently charged by Indiana ETCs for unlimited local service;
10. Whether carriers using wireless or other alternative technologies could provide local service with usage levels comparable to landline-based service at comparable and affordable rates;
11. The impact that the designation of multiple ETCs would have on federal universal service surcharges and basic local service rates;
12. The impact that the designation of multiple ETCs in rural service areas would have on state universal service funding levels, assuming a state USF is ultimately created; and
13. Whether the public interest requires more stringent ETC eligibility requirements for rural service areas (*e.g.*, rate review, tariff filing, recordkeeping, reporting, and service quality requirements for wireless carriers).

Mr. Keen indicated that the OUCC envisioned these issues being reviewed and discussed through technical workshops, a process which had been effective in a number of other general Commission investigations and could, in the OUCC's view, be a valuable starting point here as well. If total agreement were not achieved through such technical workshops or settlement negotiations, each party would then have an opportunity to present its positions in prefiled direct and rebuttal testimony, with the opportunity to present evidence and conduct cross-examination

of other parties' witnesses at a public Evidentiary Hearing.

C. INECA Testimony

The testimony admitted on behalf of INECA was by Bruce Hazelett, president of INECA. Mr. Hazelett suggested that the Commission should undertake its own rigorous review as to whether NPCR had demonstrated that it could comply with the service offerings required of all existing ETCs and comply with Commission oversight and reporting requirements applicable to all the INECA member companies. Mr. Hazelett noted statements of two FCC commissioners to support INECA's view. According to Mr. Hazelett, if the Commission is inclined to take action now, the Commission should make clear that any public interest finding be conditional. In Mr. Hazelett's view, this latter request was reasonable because of the overarching public policy issues being addressed at the federal level regarding federal USF disbursements to second ETCs and because of the potential ramifications of such actions on Indiana-specific commitments to universal service.

Mr. Hazelett explained that a telecommunications carrier must be designated as an ETC by the Commission in order for that entity to be eligible to receive federal USF disbursements, pursuant to §214 of the Federal Act. Mr. Hazelett pointed out that the plain and unambiguous language of Section 214(e)(2) states that the Commission is not required to designate an additional ETC within the service area of an RTC (such as each of the INECA member companies). Moreover, Mr. Hazelett expressed his view that if the Commission were inclined to grant ETC status to an additional entity for an RTC's service area, the Commission was still required to find affirmatively that such designation is "in the public interest." He attached the applicable sections of Section 214 to his testimony for reference to support his assertion that the Federal Act uses the term "shall" with respect to need for any public interest finding.

Mr. Hazelett explained that the service area required for designation purposes is the RTC's "Study Area," since no affirmative action had been taken to establish a different geographic area by the FCC in conjunction with its Joint Board addressing universal service. The term "Study Area," according to Mr. Hazelett, is the entire geographic territory of the specific INECA member company within which it operates and is that which is used for purposes of establishing its federal USF disbursements.

Mr. Hazelett noted that, in addition to the requirement for an affirmative public interest determination, an ETC is also required to demonstrate to the Commission the following:

1. First, the applicant's service must meet nine specific service criteria set forth by the FCC. The service must provide the following: 1) voice grade access to the public switched telephone network; 2) local usage free of charge; 3) dual tone multi-frequency signaling or its equivalent; 4) single party service or its equivalent; 5) access to emergency services, such as 911; 6) access to operator services; 7) access to interexchange service; 8) access to directory assistance; and 9) toll limitation for qualifying low-income customers -- toll limitation or toll restriction and both Lifeline and Link-Up.

- 2 Second, the applicant must advertise the availability of its service throughout the entire study area of the INECA member company.
3. Third, the applicant must be designated to serve and must offer service throughout the entire Study Area of the RTC.

Mr. Hazelett explained that these were minimum requirements, since state commissions had discretion to adopt additional requirements as a condition of designating a particular applicant as an ETC. He noted that the Federal Act uses the terms "public interest" and the "public interest, convenience and necessity," which were the very same standards that the Commission had traditionally used to ensure that the interests of all consumers within the State of Indiana are advanced. With respect to the necessary public interest finding, Mr. Hazelett recommended that the Commission should consider the impact that the designation will have on the consuming public, on the federal USF, and achievement of the universal service objectives. He expressed INECA's view that no customer of an additional ETC should be subject to a lesser degree of service than that he or she would receive with respect to that provided by an existing ETC (*e.g.*, an INECA member company), and no ETC should receive federal USF unless it abides by the same standards of service quality and consumer protections as the INECA member follows. Mr. Hazelett noted that the Commission should determine whether the applicant provides the nine services, as well as the ability to offer service throughout the entire service area.

Mr. Hazelett did not consider these conditions to be a barrier to entry, as he felt that the Commission clearly takes its commitment to preserving and advancing universal service very seriously and has ensured that its policies are tailored to the concerns that may bear directly on resulting consumer rates. As such, the Commission's oversight of these matters and of the carriers operating within Indiana is necessary, particularly when an entity seeks the responsibility as a "universal service provider" within the rural areas of Indiana. Thus, according to Mr. Hazelett, any election to seek ETC status carries with it the responsibility to comply with all applicable and relevant regulations affecting quality of service and service provisioning within Indiana.

Mr. Hazelett recommended that the Commission should assert its proper regulatory oversight of an ETC, regardless of its status as an ILEC or a wireless service provider, and the assertion of this jurisdiction is not a barrier to entry. Rather, according to Mr. Hazelett, the Commission exercising this jurisdiction would not only be a matter of fundamental fairness between carriers, but was also required to ensure consumers are not without recourse to complain and/or challenge the very basis of service an ETC is properly required to offer. Mr. Hazelett further noted that NPCR had already entered the market and it now seeks the benefits that are derived from being a universal service provider (one of which is the federal USF disbursements.) Such benefit, according to Mr. Hazelett, carries with it responsibilities, especially if an entity elects to seek those benefits. Thus, he concluded that common sense indicates that the approach he suggested for reviewing NPCR's request is no barrier to entry.

Mr. Hazelett also noted that the fact that NPCR utilizes wireless networks for calls is not

relevant to the factual findings and public interest determination that the Commission must make, and it violates the principle of technological neutrality, an additional principle of universal service adopted by the FCC. In Mr. Hazelett's view, technological neutrality demands that all ETCs be held to the same standard regardless of the technology they use.

Mr. Hazelett attached to his testimony all of the responses from NPCR to INECA's interrogatories. He expressed his concern that such responses provided scant information regarding the ETC qualifying criteria that NPCR is obligated to demonstrate, and that, based on those answers, it appeared that the NPCR believed that the Commission should simply "rubber stamp" its application. Such result, according to Mr. Hazelett, was not a position that INECA believed properly reflected the public interest determination required by the Commission.

He noted NPCR's response that it did not have a service offering comparable to the unlimited local calling plan offered by the INECA member companies and that all calls go against all of the plans' "bucket of minutes." Mr. Hazelett noted that "local measured service" ("LMS") was the exception to the rule in Indiana since the INECA member companies offer their universal service package based on unlimited calling and with toll presubscription (which NPCR does not offer). Since NPCR admitted, in Mr. Hazelett's view, that it was providing local exchange service, a substantial question of policy was raised, as this may very well be the first time that the Commission is effectively being asked to agree to the use of LMS by an ETC. Since service parity for consumers was, in Mr. Hazelett's view, a relevant policy consideration for the Commission, this issue could be addressed by requiring the offering and marketing by NPCR of at least one calling plan with unlimited local calling and toll presubscription (*i.e.*, equal access) for a flat monthly fee within a local calling area no smaller than that provided by the RTC. He further suggested that such a condition was permissible, since the FCC required only some amount of local usage to be included in the monthly charge, but had not established the amount of local usage that was required. With respect to toll presubscription, he was not aware of any decisions that would preclude such requirement as a condition for additional ETC status.

The second example Mr. Hazelett provided was based on his position that the ability to offer service also required the ability to terminate its end users' calls, and that capability required that necessary terms and conditions be in place between carriers. Mr. Hazelett supported this position by relying upon the policy established in I.C. 8-1-2-5. Mr. Hazelett indicated that NPCR had stated it had "interconnection arrangements" with only Ameritech and GTE, but NPCR has not stated that it had any arrangements with the INECA companies. Mr. Hazelett also noted that there had been no demonstration that NPCR planned to serve the entire service area of each of the affected INECA member companies.

Third, Mr. Hazelett noted that NPCR indicated that the call drops off once a NPCR customer making a call exits the NPCR network. This result, in Mr. Hazelett's view, raised the factual issue as to whether a NPCR customer actually had a dedicated path for its communications as required by the FCC's rules. Fourth, and in response to INECA's Interrogatory No. 6, NPCR indicated that it used switches in Kentucky (somewhere in Louisville) and in Iowa (somewhere in Des Moines) to provide necessary switching. According to Mr. Hazelett, even if NPCR were to be able to demonstrate its qualifications for ETC status, a

substantial question of fact still existed with respect to how the Commission could assure itself that federal USF disbursements ear-marked for Indiana are spent in Indiana, or how NPCR could certify the same, when at least part of the NPCR network is in different states. Finally, Mr. Hazelett questioned how NPCR could provide operator services since, in response to INECA's Interrogatory Nos. 6 and 8, NPCR stated that access to operator services for some customers was not available until NPRC activated the necessary trunks, but there was no indication by NPCR when these facilities would be placed in service.

In addition to these factual questions, Mr. Hazelett also opined that a substantial question existed as to whether NPCR could sustain its burden to demonstrate that the public interest would be served by granting it additional ETC status. Mr. Hazelett raised this question because, in his view, the only rationale provided by NPCR is that "competition" would be advanced. However, Mr. Hazelett noted that NPCR's purported public interest showing rested on the proposition that designating additional ETCs in an RTC's study area somehow created new competition and that competition presumably leads to beneficial competitive marketplace effects. According to Mr. Hazelett, these arguments substantially negated any meaningful application of the public interest test contained in Section 214(e)(2) of the Act. If merely increasing competition were enough to satisfy the public interest test, Congress' limitation on the designation of additional ETCs in RTCs' study areas was, in his view, an "empty" directive. Mr. Hazelett indicated that, if NPCR was correct, Congress would have applied the same ETC designation standard to both rural and non-rural areas under Section 214(e)(2), which it did not. Therefore, the automatic conclusion that competition, in and of itself, satisfied Section 214(e)(2)'s "public interest" requirements would essentially write the public interest provision for RTC areas out of the Act. Thus, in Mr. Hazelett's view, it only seemed reasonable that in adopting the public interest test and delegating to states the discretion to determine whether and how many ETCs to designate in RTCs' study areas, Congress recognized that it does not always make sense to designate additional ETCs in such areas. In addition, Mr. Hazelett noted that the "competition" theory offered by NPCR is factually suspect, as it had nothing to do with the services that the INECA member companies offer, and that service was already being offered by NPCR.

Mr. Hazelett also disagreed with the suggestion by Mr. Wood that INECA was attempting to make this case "about competition," as this suffered from the same misassumption included in Mr. Peabody's testimony, that the competition between mobile providers and/or competition for toll traffic (*i.e.*, "expanded local calling") is sufficient to sustain NPCR's burden regarding its Section 214(e)(2) public interest demonstration.

Mr. Hazelett believed that NPCR had failed to meet its burden of demonstrating that it offered the services required of ETCs. Moreover, Mr. Hazelett suggested that the scant factual information provided by NPCR, coupled with the apparent disregard for the proper oversight by the Commission of any universal service provider within the State of Indiana, raises substantial and serious questions regarding the ability of the Commission to make any public interest finding. While he recognized that the Commission could, in its discretion, conduct its own rigorous review in order to develop a factual record upon which such findings can be made, Mr. Hazelett stated that in INECA's view such factual record did not currently exist. He also

indicated that INECA would support the type of general investigation that the OUCC had suggested in the Cause addressing the application of the Centennial Companies for additional ETC status.

Although Mr. Hazelett recognized that under current FCC rules, the INECA member companies would not be financially affected by the Commission granting NPCR's request, he indicated that INECA believed that the Commission was still required to provide a proper foundation for its determinations regarding second ETCs within an RTC's service area, and require a demonstration by the applicant of compliance with the same principles, obligations, and service offerings that the INECA member companies were required to make. This parallelism, according to Mr. Hazelett, ensures not only that all universal service providers in rural areas of Indiana are held accountable for the offerings they make, but it would also ensure fundamental fairness and acceptance of the responsibilities that go hand-in-hand with the title of ETC within rural areas of Indiana. This result, according to Mr. Hazelett, was important because there is an on-going public policy debate at the federal level regarding the federal universal service mechanism and USF disbursements being made to second ETCs. According to Mr. Hazelett, the overarching issue is whether the concept of second ETCs within a rural, higher cost to serve area (such as those served by RTCs) makes rational sense. The debate (according to Mr. Hazelett) continues with asking whether it was fundamentally fair to allow second ETCs to receive disbursements without a cost-based showing (such as the incumbent RTC telephone companies provide) and the resulting adverse impact that such policy had on the overall size of the federal USF. Mr. Hazelett noted that the size of the federal USF raised thorny issues associated with the amount of funding that must be generated to ensure that proper levels of USF funding are available for disbursement, and the push back created by carriers required to fund that amount. According to Mr. Hazelett, among the changes in the federal USF that are being discussed are rule modifications that would require state responsibility for USF funding to additional ETCs in areas served by RTCs. These issues, in Mr. Hazelett's view, only highlighted the on-going federal debate, and demonstrated why any decision made in this proceeding must reflect the unsettled nature of the current federal USF debate.

Mr. Hazelett requested that any public interest determination that would provide the basis for granting NPCR's request be made conditionally, so that the Commission could revisit it. Mr. Hazelett indicated that such approach was consistent with the Commission's desire to ensure that its policies are sufficiently flexible to accommodate future regulatory changes, as well as the discretion provided to it under the Federal Act in the event that applicable rules governing designation and funding of ETCs are modified.

D. CCRTC Testimony

CCRTC offered the pre-filed testimony of Bradley W. Welp, the company's General Manager. Mr. Welp testified regarding the size of CCRTC in terms of access lines compared to larger carriers in the State. Additionally, Mr. Welp testified that CCRTC currently received \$83.5029 per access line in Federal USF Support. Mr. Welp also testified about CCRTC's plant and the rates it charges its customers which are, depending on the exchange, \$16.50 per month or \$10.75 per month, before various additives. Mr. Welp also testified that CCRTC's customers have access to advanced telecommunications services and that the company provides voice

service which meets or exceeds the Commission's service quality standards. He testified that adding ETCs will raise the size of the Federal USF and will increase the cost to CCRTC's member-customers. Additionally, Mr. Welp testified that it is possible for NPCR to refuse service to a potential customer if the request is not "reasonable." Mr. Welp testified that CCRTC provides service to each customer who requests service in CCRTC's service territory. He also testified that NPCR has not shown that customers in CCRTC's territory will enjoy improved service at lower rates if NPCR is granted ETC-status.

E. NPCR Rebuttal Testimony

Mr. Peabody filed rebuttal testimony to that provided by INECA, the OUCC and CCRTC. Mr. Peabody noted that, contrary to the testimony of INECA and OUCC, NPCR can provide the FCC's list of universal services in the areas in which it has requested designation, as well as satisfy all other ETC obligations. Mr. Peabody also testified that most of CCRTC's criticism of NPCR was based on the differences between the service offerings of NPCR and CCRTC and the differing technology, regulatory structures, and market dynamics confronting NPCR as compared to CCRTC. Mr. Peabody also testified that the FCC's rules contemplate such differences and the FCC has clearly stated that such a consideration cannot be held against it. In his view, Mr. Peabody suggested that CCRTC seeks to undermine the concept of competitive neutrality.

Mr. Peabody suggested that the other parties "rely on irrelevant and misguided arguments" in challenging the notion that NPCR's request would not serve the public interest. Mr. Peabody reiterated his view that rural customers are entitled to the full benefits of wireless service even though they live in areas that are costly to serve, and that the consumers, not LEC witnesses, should determine "whether a particular service offering is affordable or of 'high quality.'" Mr. Peabody stated that allowing NPCR to have access to federal universal service funding will, in the long run, provide consumers in small and rural markets with access to high quality services at comparable rates.

With respect to challenges regarding the provision of the FCC list of universal services, Mr. Peabody suggested that the "attack" is with respect to the amount of local usage included within NPCR's offerings. In response, Mr. Peabody restated his prior testimony that the FCC has not set a standard for minutes of use and, more recently, that unlimited usage should not be included within the core universal service elements. Thus, NPCR is in compliance, according to Mr. Peabody, since each package has a minute of use component built in and one offering is unlimited.

Mr. Peabody stated that NPCR provides single party service even though a customer may drop off the network when it is beyond the range of a NPCR tower. In Mr. Peabody's opinion, the FCC requirement addresses the length of the customer's transmission over a dedicated message path and when the transmission ends there is, by definition, no message path. As to access to operator services, Mr. Peabody indicated that the necessary trunking arrangements allowing access to operator services have now been activated for Indiana customers. With respect to equal access and INECA's suggestion of service parity, Mr. Peabody stated that the FCC recently ruled that equal access is not a supported service for the purposes of USF.

Mr. Peabody also challenged INECA's concerns regarding the ability for NPCR to lawfully terminate traffic to the INECA companies, since the agreements in place are only between NPCR and Amertech and GTE. Mr. Peabody stated that its arrangements are with tandem operators and that these arrangements offer LATA-wide termination.

Mr. Peabody next addressed what he characterizes as "service area" issues. Mr. Peabody stated that NPCR licenses cover all of the affected RTCs' Study Areas and that the FCC does not require NPCR to serve every customer throughout a study area at the time of designation. With respect to concerns regarding what a "reasonable request" for service is, Mr. Peabody noted that some requests may simply require the offering to the customer of a handset while the need to erect a tower to serve a customer would be unreasonable.

Mr. Peabody also stated that the FCC has concluded that federal USF funding levels are for it and the Joint Board to decide, not the Commission. Mr. Peabody rejected the concerns raised by INECA regarding the public interest analysis provided by NPCR, noting that its rationale included more than simply competition. Mr. Peabody stated that the appropriate inquiry is whether there is anything about these RTC areas that justifies refusing to provide those customers the full benefits of competition promised by Congress. Mr. Peabody noted that NPCR wants to utilize and expand its infrastructure, and that action provides greater innovation and service incentives to LECs. Mr. Peabody stated that the OUCC's concerns regarding NPCR's compliance with LEC requirements were a "red herring," since there are differences in service offerings, and that is not relevant to ETC designations. Similar expressions were made by Mr. Peabody with respect to CCRTC, stating that NPCR's designation as an ETC has been shown to "advance competition, improve services, and expand the availability of universal service."

Mr. Peabody concluded that the FCC has made clear that the public interest determination "should examine whether consumer benefits from designation outweigh demonstrated adverse impacts on consumers" and access to federal USF monies is required to ensure a level playing field. With respect to consumer benefits, Mr. Peabody referenced NPCR's expanded local calling areas and nationwide calling, as well services outside the core list of universal service such as Internet, email and text messaging. Mr. Peabody reiterated prior testimony regarding the quality of NPCR's service, and benefits from competition as a basis for the Commission to find that the public interest would be served by granting NPCR's ETC application.

Mr. Wood's rebuttal offered similar responses to the other parties' testimony. Characterizing the positions of INECA and CCRTC as "well worn arguments," he suggested that neither of these parties has presented fact or sound policy for their positions and that state regulators and the FCC have rejected their positions. Mr. Wood contended that the parties were seeking to "re-litigate" FCC decisions and asking the Commission to "ignore" portions of the FCC's May, 2001 USF decision. According to Mr. Wood, the relevant inquiry is whether NPCR offers "services that provide benefits to consumers" and whether there is "some issue fact or issue that is specific to [NPCR], or to the service areas within which it seeks an ETC designation in Indiana, that would outweigh those benefits."

With respect to factual questions, Mr. Wood suggested that the issues raised are based on speculation or factual assertions that have no bearing on the issues before the Commission. Mr. Wood noted that NPCR is seeking to invest in technology and facilities to provide competitive services. Mr. Wood also challenged INECA's suggestion regarding the scope of this proceeding, arguing that the "overarching issue" is not the size of the fund but rather whether the "existing mechanism encourages inefficient entry in the highest cost areas." Mr. Wood also disagreed with INECA's position that "service parity" is a relevant consideration, since competitive markets result in different service offerings, allowing carriers to tailor consumer offerings to the identified need. According to Mr. Wood, INECA's suggested service parity does just the opposite. With respect to service parity, Mr. Wood disagreed with the INECA position regarding the distinction between landline and mobile services in that NPCR wants to offer a service that directly competes with the landline offering. Similar challenges were made by Mr. Wood to CCRTC, suggesting that CCRTC's position forgets the fact that LECs have had many years to construct their networks with USF monies, and NPCR wants the same opportunity. If given this opportunity, according to Mr. Wood, NPCR would be a direct competitor of the LEC.

With respect to CCRTC's position regarding the level of NPCR's rates, Mr. Wood noted that if there is a concern regarding such levels, then customers will not purchase NPCR's service and no USF will be available to NPCR. But, according to Mr. Wood, CCRTC's view addressed only short run considerations because designating NPCR as an additional ETC would create incentives for efficiencies, thus leading to lower prices over time. In Mr. Wood's opinion, using USF monies to construct infrastructure rather than offset rates encouraged this result. Finally, Mr. Wood suggested that the price comparison that CCRTC is providing is not an "apples-to-apples" comparison and, in any event, if the prices of NPCR's services are too high, there should be no reason not to designate NPCR as an ETC because it would not be a "competitive threat" to CCRTC.

With respect to quality of service issues, Mr. Wood stated that the issues are moot because customers would not choose NPCR's service if the price were too high or service quality low, thereby not allowing NPCR to receive federal USF monies. Thus, according to Mr. Wood, the current process allows the marketplace to "sort out these issues," with the consumer being the ultimate decision maker. Mr. Wood stated that no additional requirements need be imposed on NPCR than those it meets today. Mr. Wood argued that INECA's "parity" position regarding unlimited calling should be rejected because NPCR should not be "criticized" for "offering services with a rate structure that permits customers to buy only what they need and that reflects the underlying costs to provide the functionality."

As to the size of the federal USF, Mr. Wood did not believe that such concerns were related to the instant application, and are being addressed by the FCC and Joint Board. Mr. Wood stated that while a smaller fund may be preferable, the growth in the size of the federal USF was considered by the FCC and fully recognized. Moreover, certain aspects of the federal USF (such as indexed caps) minimized growth. He also noted that the fund size is related to the use of embedded costs for calculating the high cost loop levels of federal USF disbursements rather than forward-looking costs. Similarly, the FCC's decisions regarding USF "portability" result in an increased size of the USF and to suggest that "best means of limiting growth of the

fund is to deny applications by competitive carriers for ETC status is disingenuous at best" since these policies were adopted based on the requests of RTCs. Characterizing "assurances of cost recovery in rural areas" as a "gift from the FCC" not present in a competitive market, Mr. Wood recognized that the "transition mechanism" is costly in the short term but it "can gradually wean the incumbent rural LECs over the period of time that it is in effect."

Mr. Wood characterized INECA's observation regarding state participation in the federal USF funding process as a "scare tactic." He stated that, based on his experience and participation in the process, no serious discussion of such outcome is taking place. Even though NPCR is providing service today, Mr. Wood noted that NPCR is committing to the ability to provide universal service, something it could not do absent federal USF disbursements. Mr. Wood stated that withholding federal USF monies to NPCR would not reflect how rural LECs constructed their networks over time and "even now, ILECs that have been providing service for over a century do not have ubiquitous networks." Consequently, the approach sought by NPCR was not fundamentally different, according to Mr. Wood.

With respect to utilizing the federal USF monies in Indiana, Mr. Wood stated that this issue is not of concern since the Universal Service Administrative Company ("USAC") has responsibility for fund distributions as well as auditing powers, the Commission has the ability to monitor this issue in its annual certification process, and the FCC has the authority to impose its own measures upon wireless licensees such as NPCR. Similarly, considerations regarding the need for cost-based showings by additional ETCs are not necessary, since the FCC and Joint Board are looking into this issue. If the concern is that the wireless provider has a lower cost structure than the LEC, according to Mr. Wood, that concern has "no validity from a public interest standpoint" because that advantage is not created by the USF portability rules and any advantage would "only encourage accelerated deployment of network facilities by the more efficient provider." Thus, Mr. Wood criticized INECA's concern by not explaining why the public interest would be served by "discouraging investment by a more efficient provider while encouraging investment by a less efficient provider." Mr. Wood also cited several public policy questions that he suggested highlight his concerns

Why is it in the public interest for wireline carriers to serve these geographic areas at all? Why is it in the public interest to delay network deployment for the more efficient carrier? Why is it in the public interest to support, into perpetuity, the network of the less efficient carrier? Why should the designation of [NPCR] (one of those potentially lower cost providers) as an ETC be postponed while these conceptual issues are being debated in another forum? .

..

For similar reasons, Mr. Wood disagreed with CCRTC's statements regarding non-cost based showings, suggesting that concerns regarding "cream skimming" have already been addressed by the FCC, and that CCRTC was given the ability to disaggregate its federal USF disbursements if it so chose. Finally, Mr. Wood disagreed with INECA's suggestion that the public interest finding be made "conditional" since, according to Mr. Wood, the "proper course of action in this case is to apply the law as it exists today" and he expected that if changes in the

federal USF process would be made, the FCC would, in any event, "undoubtedly provide guidance for the treatment of existing ETC designations."

Mr. Wood then responded to the OUCC concerns. First, Mr. Wood believed that costs of an ILEC would be avoided, and thus concerns over increased per-line cost levels may be overstated where the LEC loses customers to an additional ETC. Second, with respect to concerns that service is being provided by NPCR without USF disbursements, Mr. Wood noted that the objective is to allow NPCR to build out its network as the LECs have done, and, like the LECs, federal USF monies are important to allow this to occur. With respect to complying with existing service quality rules, Mr. Wood suggested that such rules are "not technology neutral," "may create artificial barriers to entry," and otherwise can be left to the marketplace to sort out. Finally, with respect to the OUCC's concern regarding the growth of the federal USF, he stated that the issue is not primarily caused by the designation of additional ETCs, and cannot be effectively addressed by lowering levels of federal USF disbursements to additional ETCs. In addition, the fund growth cannot be remedied by not designating more ETCs, but rather through changes in how the per-line disbursements are made.

5. Commission Findings.

The evidence in the record establishes that NPCR meets the eligibility criteria for ETC designation as contained in Section 214(e)(1), as set out more fully below.

A. Petitioner is a Common Carrier

The first requirement for ETC designation is status as a common carrier under federal law. A "common carrier" is generally defined in 47 U.S.C. § 153(10) as a person engaged as a common carrier on a for-hire basis in interstate communications utilizing either wire or radio technology. The FCC's regulations specifically provide that a specialized mobile radio service, such as that provided by NPCR, is a common carrier service. *See* 47 C.F.R. § 20.9(a)(4). NPCR is therefore a "common carrier" for purposes of obtaining ETC designation under 47 U.S.C. § 214(e)(1). (Pet. Ex. 3, p. 6.)

B. Petitioner Provides Each of the FCC's Supported Services

The record evidence confirms that NPCR's network can provide each of the supported services required of an ETC, and NPCR will offer all of those services to its universal service customers once designated an ETC (Pet. Ex. 3, p. 7.)

i. Voice-grade access to the public switched telephone network. The FCC concluded that voice-grade access means the ability to make and receive phone calls, within the 300 to 3000 Hertz frequency range. 47 C.F.R. § 52.101(a)(1). Through its interconnection arrangements with local telephone companies, including Ameritech and GTE, all Indiana customers of NPCR are able to make and receive calls on the public switched network within the FCC's specified bandwidth. (Pet. Ex. 3, pp. 7-8.)

ii. Local usage. Beyond providing access to the public switched network, an ETC must include an amount of free local usage determined by the FCC as part of a

universal service offering. 47 C.F.R. § 54.101(a)(2). The FCC has not quantified a minimum amount of local usage required to be included in a universal service offering, and has declined to require that ETCs offer unlimited local usage.¹ NPCR will include local usage in its universal service offerings. (Pet. Ex. 3, p. 8.)

iii. Dual-tone, multi-frequency ("DTMF") signaling, or its functional equivalent. DTMF is a method of signaling that facilitates the transportation of call set-up and call detail information. Consistent with the principles of competitive and technological neutrality, carriers that provide signaling that is functionally equivalent to DTMF meet this service requirement. 47 C.F.R. § 54.101(a)(3). NPCR uses out-of-band digital signaling and in-band multi-frequency ("MF") signaling that is functionally equivalent to DTMF signaling. (Pet. Ex. 3, p. 8.)

iv. Single-party service or its functional equivalent. "Single-party service" means that only one party will be served by a subscriber loop or access line, in contrast to a multi-party line. 47 C.F.R. § 54.101(a)(4). *Universal Service Order*, ¶ 62. NPCR meets this requirement by providing a dedicated message path for the length of all customer calls. Although INECA witness Hazelett questioned whether NPCR provided this supported service (INECA Ex. 1, p. 8), Mr. Hazelett admitted on cross-examination that NPCR provides a dedicated message path in compliance with 47 C.F.R. § 54.101(a)(4). (Tr. 180.)

v. Access to emergency services. The ability to reach a public safety answering point ("PSAP") by dialing 911 is a required service in any universal service offering. Enhanced 911 or E911, which includes the capability of providing both automatic numbering information ("ANI") and automatic location information ("ALI"), is only required if a PSAP is capable of receiving and utilizing such information, and requests the delivery of such information from a wireless provider. *Universal Service Order*, ¶¶ 72-73. The record reflects that NPCR currently provides all of its customers with access to emergency services by dialing 911 in satisfaction of this requirement. (Pet. Ex. 3, p. 9.) In addition, NPCR has deployed Phase I and Phase II E911 service requests from 17 PSAPs. (Pet. Ex. 3, p. 9.) NPCR is required to continue to implement Phase I and Phase II E911 requests in accordance with FCC rules.

vi. Access to operator services. Access to operator services is defined as any automatic or live assistance provided to a consumer to arrange for the billing or completion, or both, of a telephone call. 47 C.F.R. § 54.101(a)(6). *Universal Service Order*, ¶ 75. NPCR demonstrated it meets this requirement by providing all of its customers with access to operator services provided by either the Petitioner or other entities (e.g. LECs, IXC's, etc.). (Pet. Ex. 3, pp. 9-10; Pet. Ex. 5, p. 7.)

vii. Access to interexchange service. A universal service provider must offer consumers access to interexchange service to make and receive interexchange calls. 47

¹ See *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order and Order on Reconsideration, FCC 03-170, ¶ 14 (rel. July 14, 2003) ("*July 2003 Order*")

C.F.R. § 54.101(a)(7). NPCR presently meets this requirement by providing all of its customers with the ability to make and receive interexchange or toll calls through direct interconnection arrangements the Company has with several interexchange carriers (IXCs). (Pet. Ex. 3, p. 10.) NPCR does not offer equal access to other interexchange carriers, but this is a requirement that the FCC has declined to require of ETCs. Despite requests by intervenors in this case, we decline to add it as a requirement.

viii. Access to directory assistance. The ability to place a call directly to directory assistance is a required service offering. 47 C.F.R. § 54.101(a)(8). NPCR meets this requirement by providing all of its customers with access to directory assistance by dialing "411." (Pet. Ex. 3, p. 10.)

ix. Toll limitation for qualifying low income consumers. An ETC must offer toll limitation services to qualifying Lifeline customers at no charge. 47 C.F.R. § 54.101(a)(9). "Toll limitation" is defined as "toll blocking" or "toll control" if a carrier is incapable of offering both, but as both "toll blocking" and "toll control" if a carrier can provide both. 47 C.F.R. § 54.400(d). NPCR is unable, at this time, to provide "toll control." The Company can and will offer "toll blocking" to its Lifeline customers, at no charge, as part of its universal service offerings. (Pet. Ex. 3, p. 10.)

C. Petitioner Will Satisfy Advertising Requirements

The third requirement for ETC designation is that a carrier agrees to advertise the availability of the supported services and charges using media of general distribution. 47 U.S.C. § 214(e)(1). To date, neither the FCC nor this Commission has adopted any specific advertising guidelines for any ETC.² NPCR presented evidence that the Nextel brand name is currently advertised nationwide by NPCR and Nextel Communications, and that its 2002 advertising costs totaled approximately \$35.1 million. (Pet. Ex. 3, p. 13.) No party challenged NPCR's evidence that it can and will advertise through media of general distribution as required by law.

D. Petitioner's Designated ETC Service Areas

Although NPCR presented different evidence as to its proposed ETC service areas, its late filed revised Exhibit 7 is Petitioner's final statement of the area included in its proposed Indiana ETC service territory and the areas in which it will advertise the supported services if its request for ETC status is granted. 47 U.S.C. § 214(e)(1). Section 214(e)(5) of the Act defines the term "service area" as a geographic area established by a state commission for the purpose of determining universal service obligations and support mechanisms. 47 U.S.C. § 214(e)(5). For an area served by a rural telephone company, 47 U.S.C. § 214(e)(5) provides that the term "service area" means the rural telephone company's "study area," unless and until the FCC and a state commission establish different service areas under the procedures set forth in 47 C.F.R. § 54.207(c)-(d). For an area served by a non-rural LEC, there is no "study area" requirement, so an ETC's designated service area can be established on a wire center basis. 47 U.S.C. § 214(e)(5).

² *Universal Service Order*, ¶ 148

Petitioner's Exhibit 7 (Late Filed Revised) eliminated four rural LEC areas currently served by CCRTC from its proposed ETC service territory. NPCR indicated that it is licensed to provide service throughout all rural LEC study areas and non-rural LEC wire centers identified in the service areas shown on Petitioner's Exhibit 7 (Late Filed Revised).

Although NPCR's current coverage does not today extend throughout all of the areas in which it requests designation (*see* Pet. Ex. 3, Ex. SP-2), the FCC has held that an ETC applicant is not required to provide ubiquitous service at the time of its application, but instead must be given time to extend its network based on consumer requests.³ NPCR's witness, Mr. Peabody, testified that with access to universal service support the NPCR would be able to build-out its Indiana network to better serve rural consumers. (Tr. 51.) NPCR's evidence demonstrated an intent and ability to provide service as an ETC, and to respond to reasonable requests for service as required by the FCC, in the areas identified on Petitioner's Exhibit 7 (Late Filed Revised).

E. Commission Factors of Consideration

We begin with our finding, which is that granting NPCR's petition is in the public interest. Numerous factors were taken into account, and we enumerate them here so that we may provide the requisite road map for subsequent applicants, as well as showing the support for our ultimate finding.

a. Public interest analysis under 47 U.S.C. § 214(e)(2) for CETC designation in Specified Rural Service Areas

To guarantee universal service, TA '96 required that all telecommunications carriers contribute into a Universal Service Fund ("USF") on an equitable and nondiscriminatory basis. 47 U.S.C. §254(f). This fund is used to act as a counterbalance for those carriers entering traditionally high cost areas, such as rural or insular areas. "Universal service contributions...support[] the expansion of, and increased access to, the public institutional telecommunications network." *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 427 (5th Cir. 1999) ("TOPUC"). The designation of an ETC provides the public with the certainty that there will be a carrier of last resort that provides services determined to be necessary. 47 U.S.C. §214. ETCs are required, at the risk of sanctions, to provide service to designated customers at affordable prices. 47 U.S.C. §214(d); *see also* *In re the Filing by GCC License Corp.*, 623 N.W.2d 474, 477 (S.D. 2001.)

In areas served by rural telephone companies, a competitive ETC can be designated only upon a finding that the designation will serve the public interest. 47 U.S.C. § 214(e)(2). Congress did not define or limit states' public interest tests under Section 214(e)(2), leaving it to

³ *See In the Matter of Federal-State Joint Board on Universal Service – Western Wireless Corp. Petition for Preemption of an Order of the South Dakota Public Utilities Commission*, Declaratory Ruling, CC Docket 96-45, FCC 00-248, ¶ 17 (rel. Aug. 10, 2000) ("[A] telecommunications carrier's inability to demonstrate that it can provide ubiquitous service at the time of its request for designation as an ETC should not preclude its designation as an ETC.")

the states to set their own parameters for public interest analyses for rural service areas, consistent with the underlying purposes of the Act, namely:

To promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies.

Pub. L. No. 104-104, 110 Stat. 56 (1996).

47 U.S.C. §254(b) sets out the standards under which we must examine whether or not granting NPCR ETC status would be in the public interest. Section 254(b)(3) of the Act provides that rural consumers should have access to services that are comparable to those available in urban areas:

Consumers in rural, insular, and high cost areas should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.

Apart from the promotion of competition, there has been no citation to any authority showing that there is a limitation on the factors that the Commission may take into account when making a public interest determination. *WWC Holding Co., Inc. v. Public Service Commission*, 442 Utah Adv. Rep. 8, 44 P.3d 714, 719 (2002). Under Section 214(e) of TA '96, the Commission is given the discretion of how many carriers to designate within a given area, but is not prohibited from imposing its own eligibility requirements. *TOPUC*, 183 F.3d at 418. This is consistent with the historical role states play in guaranteeing service quality standards for local service. *Id.* When a carrier applies to be an ETC, it should expect that the state commission will carefully scrutinize its petition. As the Joint Board has noted,

While a carrier need not actually provide the nine services required of ETCs at the time of application, they must make a case for how they will provide them, if they are unable to do so at the time. A new entrant can make a reasonable demonstration to the state commission of its capability and commitment to provide universal service without the actual provision of the proposed service. There are several possible methods for doing so, including, but not limited to: (1) a description of the proposed service technology, as supported by appropriate submissions; (2) a demonstration of the extent to which the carrier may otherwise be providing telecommunications within the state; (3) a description of the extent to which the carrier has entered into interconnection and resale agreements; or (4) a sworn affidavit signed by a representative of the carrier to assure compliance with the obligation to offer and advertise the supported services.

In the Matter of Federal-State Joint Board on Universal Service, 15 FCC Rcd 15168, 15178 (2000) (footnotes omitted); accord, *In the Matter of Federal-State Joint Board on Universal Service*, 17 FCC Rcd 23532, 23539 (2002), *GCC License Corp.*, 623 N.W. 2d at 481.

State commissions are granted the authority to make the designation because of a unique awareness of states' needs and problems. What is examined, however, is dependant upon the duty to the public. "[C]ustomers' interest, not competitors', should control agencies' decisions affecting universal service." *Washington Independent Telephone Assn. v. Washington Utilities and Transportation Comm.*, 110 Wn. 498, 41 P.3d 1212, 1218 (2002). "Public interest is a broad concept encompassing the welfare of present and future consumers, stakeholders, and the general public. The 'public interest' is broader than the goal of competition alone...[and] broader than the goal of advancing universal service." *Washington Independent Telephone Assn. v. Washington Utilities and Transportation Comm.*, 149 Wn.2d 17, 27, 65 P.3d 319, 324 n.3 (2003) (citations omitted.)

In addition, 47 U.S.C. §253(b) allows states to impose requirements on the provision of telecommunications services that are necessary to preserve universal service, protect public safety and welfare, ensure the continued quality of services, and protect the rights of consumers. *In the Matter of Federal-State Joint Board on Universal Service*, 15 FCC Rcd at 15176. This authority, however, is tempered by the requirement that such regulation be competitively neutral. *Id.* While there is the mandate that the State's additional regulations not be inconsistent with the FCC's rules, the statute contemplates additional state regulation that adopts "additional specific, predictable, and sufficient mechanisms" to preserve and advance universal service. 47 U.S.C. §254(f).

Given these explicit statutory mandates, it is clear that Congress intended that state commissions were to play a critical and necessary role in the determination of successor ETCs in rural areas. We intend to honor our obligation, and set out such factors as may guide ETC applicants in the future in making their filings. We turn, then, to the particulars supporting a finding that the designation of NPCR as an ETC is in the public interest.

NPCR's witnesses testified that access to federal universal service funding will allow NPCR to continue to extend its network throughout the state, and this network infrastructure will continue to be available to provide universal and advanced services to rural consumers in Indiana. NPCR's witness Mr. Peabody indicated that it appeared that a "minimal" extension of the network was already anticipated to improve service, and that if ETC status was granted, capital outlay plans could be formulated "in a few days." Tr. at 51. Further, Mr. Peabody testified that even relatively minor investments could improve service area reliability and increase a cell tower's footprint, such as the installation of new coaxial cable on a tower. Tr. at 52. Mr. Peabody recognized that such an extension of service is "the right thing to do" if NPCR is given ETC status, to assist consumers with emergency coverage and provide rural coverage. *Id.* at 52-53.

NPCR currently provides GPS location assistance for customers dialing 911 where requested by a PSAP. As NPCR continues to expand its network in Indiana this network infrastructure will be available to provide basic and enhanced services to its customers. (Pet. Ex. 3, p. 16) Expansion of the network to provide ubiquitous coverage in Indiana rural areas is in the public interest, as cell phones for farmers become the ideal way to communicate from the "north forty."

NPCR presented evidence that its system also provides customers with the ability to roam nationwide on the Nextel network without having to pay any roaming fees, although its roaming capabilities are limited, in that they are only able to function with other Nextel equipment. Tr. at 103-104. In addition, NPCR provides larger local calling areas, nationwide long distance in some plans, its Direct ConnectSM walkie-talkie service, and mobile E911. (Pet. Ex. 3, p. 16.) NPCR explained that universal service funding is necessary for continued network build-out and expansion in Indiana in order to achieve the same levels of service in rural study areas as Nextel currently offers in urban wire centers. Tr. at 51. NPCR's witness, Mr. Wood, testified that these build-out decisions bring not only universal service funds, but also access to additional private capital that may not otherwise be economically justified. (Pet. Ex. 4, p. 11.)⁴

In discussing the various factors inherent in wireline vs. wireless carriers, NPCR witness Wood noted mobility as a positive aspect of wireless service. Tr. at 145-46. This was contrasted with the service quality advantage of wireline, nonetheless limited by its distance from the end of the wire.⁵ *Id.* We favor an approach that places the issue of mobility of service in the context of one of many factors to be considered in the issue of determining ETC status. Further, the arguments in favor of competition, choice, mobility, and a larger local calling area are not supported by a showing that these factors are, per se, determinative in showing that ETC status is in the public interest. *WWC, supra*, 44 P.3d at 721. This is consistent with the mandate of 47 U.S.C. 253(b) that State regulation be administered in a competitively neutral fashion. To hold otherwise would have the effect of deeming wireline carriers "worse" because they lack mobility, or have a smaller calling area. The mandate of competitive neutrality requires an inquiry into whether a requirement imposed upon applicants – whether incumbents or competitors, wireline or wireless – has a competitively neutral effect. *In the Matter of Federal-State Joint Board on Universal Service*, 15 FCC Rcd at 15177. Therefore, for the Commission to remain competitively neutral on the designation of subsequent ETCs in rural areas, we must refrain from declaring a particular feature of a technology "better." The features of a particular system, regardless of wireline or wireless, must be presented in the context of how it serves the public interest.

Further, as NPCR points out, wireline carriers did not build out their system overnight, but did so over an extended period of time, while receiving both explicit and implicit subsidies. Tr. at 146. For us to decline to support wireless carriers in a similar fashion would violate the mandate of technological neutrality. NPCR committed, through its testimony and evidence, to increase service quality and extend its network so that "consumers [can] have substitute services[]" Tr. at 146.

NPCR offered evidence that the funds collected by the designation of wireless CETCs is so small compared to ILEC funding that removing all wireless CETCs would not change the surcharge. (Tr. 120.) However, NPCR is wrong in its assertion that the Commission should not

⁴ Mr. Wood testified. "In my experience, \$1 in USF support typically generates an additional \$3-\$5 in private capital" (Pet. Ex. 4, p. 11 n.10)

⁵ On re-direct, Mr. Wood stated that the NPCR technology produced an "extremely clear" voice quality, and that he meant that the ILECs had had a significant amount of time and support in which to create a quality network, which NPCR had not. Tr. at 158-59

focus on the impact to the fund. Tr. at 119. The issue of the size of, and impact to, the universal service fund must be placed in context based on the proposed amount of funds flowing into the state. These are among a number of factors to be viewed by a State commission in making a public interest determination. NPCR does correctly assert that denial of a CETC petition is not the way to change the amount paid by consumers, but a change to the pricing base is. Tr. at 123. NPCR proffered this testimony when defending its designation's potential effect on the USF passed on to customers:

[D]eal[] with the contribution base...by dealing with economic versus embedded versus modified embedded cost recovery, you cannot impact that contribution factor to any significant decimal place by denying individual ETC designation [sic], CETC designation, or all ETC designations collectively...ETCs are currently receiving...less than 6 percent of the high cost funds, which would be less than 30 percent of the total fund. The remainder would be to ILECs. Wireless ETCs are receiving less than half of what's going to all CETCs. There is no way in the decimal places to which all of these calculations are carried out, what we'd call significant digits, to have an impact from CETC designations based on fourth quarter '03 projections.

Testimony of Don Wood, Tr. at 121-22.

This testimony represents the analysis the Commission expects in defense of an ETC petition. Applicants must be able to answer how, and in what terms, its presence as an ETC will affect the market as a whole, and the public interest generally. Mere defensive posturing does nothing to illuminate the Commission on the impact of a designation. Throwing up the Commission's lack of jurisdiction, for example, over the rates and entry of wireless carriers, is reflexive and ultimately non-productive. As NPCR correctly pointed out, current USF support is not based on actual per line need or cost, but on the modified embedded cost per line of the ILEC. Tr. at 124. To the extent that this represents an artificial construct that does not accurately reflect NPCR's costs (or that of any other wireless CETC applicant), it is not a factor over which NPCR has ultimate control, beyond filing comment with the FCC. It should, however, and has done so in this case, present evidence of what impact its designation may have.

NPCR has committed to expansion of coverage in the designated areas, seeking to make its service ubiquitous. In addition, it has examined its network sufficiently to present to the Commission those factors which it needs to improve, and in which areas it will focus. These details, as well as additional factors upon which we will expand more below, show that NPCR is approaching its potential ETC obligations with the requisite thoroughness and solemnity. These factors have convinced us that their petition should be granted.

b. Network infirmities

The premise of universal service contains within it recognition of network infirmities. But for those infirmities, the concept of universal service would be unnecessary. Hence, in an examination of an ETC designation request, an applicant must make specific offerings of proof as to how it will remedy any infirmities it may have identified in its system, or show how it will improve existing service with the USF funds it seeks.

NPCR asserts that the Commission has no jurisdiction over it in regard to service quality standards. From a public policy and public interest stand point, the certification of an ETC – designed to be, as necessary, the carrier of last resort – presents an assurance to the public that service will be universal, as promised. A carrier must show that system infirmities will be remedied, as subscribers could well find themselves without service at dire times. For example, the FCC has noted that the ability to call for and receive help in an emergency is the overarching reason for purchasing a wireless phone.⁶ NPCR's witness showed his recognition of this precept in the following testimony:

That's, in fact, why this proceeding is so important, because the company's providing some services in some portions of these areas but does not have the opportunity absent USF Funding to make the service available at high quality ubiquitously through the area so that the customer sees that as a substitute for his basic telephone service.

Testimony of Don Wood, Tr. at 133-34.

In recognition of its' coverage "dead spots," NPCR has appropriately assured the Commission that such gaps in coverage will be filled if it is granted ETC status.⁷ While service is presumed in dead spots under FCC regulations⁸, if the Commission is aware of them, they may certainly take notice of them and consider them in the context of a prospective ETC's application. Requiring this of an ETC is consistent with the Commissions' role in assuring that the public is receiving adequate service. Approval of a second ETC could appropriately be conditionally approved by the Commission based on an expectation that the second ETC will provide adequate service quality to its customers in the state of Indiana.

State commissions have examined ETC applicants' plans to serve customers and improve their networks. For example, in Arizona, the Commission has evaluated an ETC's plans for customers to receive service by utilizing various technical means.⁹ The Arizona Commission observed that the ETC had been operating for approximately ten years and had worked with five Native American tribes to secure adequate cell sites on Native American lands.¹⁰ Minnesota examined an ETC's plans to provide universal service to customers using .6-watt handheld phones or a 3-watt telephone and noted the applicant's commitment to building 15 specific cell sites in high-cost areas that it would not otherwise include in its network expansion plans because of cost issues.¹¹

⁶ *In the Matter of the Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, 15 FCC Rcd 17442, 17454 n.59 (August 24, 2000).

⁷ While the FCC has designated a wireless carrier even when dead spots were admitted, that certification was premised on remedying the specific dead spots identified by improving the network after certification. *In the Matter of Federal State Joint Board on Universal Service*, 17 FCC Rcd at 23538

⁸ 47 C.F.R. §22.911(b)(b).

⁹ *See, Arizona Smith Bagley ETC Order* at 6

¹⁰ *Id*

¹¹ *See Petition of Midwest Wireless Communications, L.L.C., for Designation as an Eligible Telecommunications Carrier (ETC) Under 47 U.S.C. § 214(e)(2)*, OAH Docket No. 3-2500-14980-2, PUC Docket No. PT-6153/AM-02-

The Minnesota Public Utilities Commission found that the company was able to offer its services through approximately 200 cell sites in and around the state, pledged to build an additional 15 cell sites upon designation as an ETC, pledged to meet customer orders for new service through a variety of measures including additional cell sites, cell extenders, rooftop antennae, high-powered phones, and the resale of existing service, and was willing to address a customer's request for service by developing a schedule for extending service.¹² The Regulatory Commission of Alaska recently granted ETC status to a CMRS provider and stated that the provider need not prove its ability to construct facilities throughout every portion of the incumbent LEC's service area but must demonstrate that its system of providing service throughout the incumbent LEC's service area are *reasonable*.¹³ The Alaska Commission found that a seven-step plan proposed by Alaska Digitel regarding customer service was reasonable.¹⁴ All of these examples support the finding that ETCs can be held to service quality standards and oversight.

Numerous cases have held that requiring an ETC applicant to provide the required services prior to the grant of ETC status would work an anti-competitive outcome, as applicants would be forced to make outlays for services, unsure if such services would ever be requested or supported. However, in those cases where an applicant identifies such weaknesses in its system(s) that might prevent full implementation of a required service under 47 C.F.R. §54.101, we find that there is a requirement that the ETC applicant provide an affirmative statement of how and when the shortcoming is to be remedied. As an example, in the context of a request to extend the deadline for meeting E911 capability, the FCC recently advised Tier III wireless carriers as follows:

[T]he Commission should be able to make the factual determinations necessary to find good cause for granting the waiver if the carrier, as we have previously stated, provides 'concrete, specific plans to address the accuracy standards and ha[s] presented [its] testing data and other evidence to demonstrate its inability to meet the accuracy requirements'....Carriers should avoid blanket statements of technical infeasibility, instead providing technical data on particular portions of their network or pieces of equipment that are problematic.

In the matter of Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, FCC03-241, ¶26 (Released October 10, 2003).

686, Findings of Fact, Conclusions of Law, and Recommendation at 6, 11 (Minn. Office of Admin. Hearings Dec 31, 2002) (*Minnesota ALJ ETC Recommendation*).

¹² See *Minnesota Midwest Wireless ETC Order* at 6

¹³ See *Alaska Digitel ETC Order* at 8-9

¹⁴ *Id.* The plan states that if customer is not in an area where the CMRS provider, Alaska Digitel, currently provides service, Alaska Digitel will (1) Determine whether the customer's equipment can be modified or replaced to provide acceptable service; (2) Determine whether a roof-mounted antenna or other network equipment can be deployed at the premises to provide service; (3) Determine whether adjustments at the nearest cell site can be made to provide service; (4) Determine whether a cell extender or repeater can be employed to provide service; (5) Determine whether there are any other adjustments to network or customer facilities that can be made to provide service; (6) Explore the possibility of resale; (7) Determine whether an additional cell site can be constructed to provide services, and evaluate the costs and benefits of using high cost support to serve the number of customers

In this cause, an identification of areas where signal strength was below that needed for a reliable signal enabled NPCR to specify where upgrades to service – in the form of new cell towers or even an installation of new coaxial cable – could be made with USF money. Further, NPCR has made assurances to the Commission that USF money received will be used to benefit Indiana services by expansion of its existing coverage. If an ETC applicant wishes to support the existence of universal service, it must have made plans, expressed to the Commission in explicit terms, to remedy those areas of its service that might be otherwise lacking.

We find that this is a good admonition to carriers, no matter what the technology used. Applicants must make a thorough review of their service offerings and determine what, if any, parts of the system must be upgraded to be consistent with the then-current FCC guideline for ETCs. In addition, a failing in a system, even if outside the ETC core services required, should be addressed by the applicant in specific terms as a focus for upgrade with potential USF funds.

c. State's obligation to oversee the financial aspects of USF

The FCC specifically mandated that state commissions certify that the federal USF funds are being used “only for the provision, maintenance and upgrading of facilities and services for which the support is intended,” consistent with 47 U.S.C. §254(e). “Absent such a certification, carriers will not receive such support.” *Id. In the Matter of Federal-State Joint Board on Universal Service*, 16 FCC Rcd 11224, ¶187 (2001); 47 C.F.R. §54.314.

In the context of setting a benchmark of statewide average costs, the FCC has noted that the use of a statewide average costs “reflects what we believe to be an appropriate policy decision that in such cases the state has the primary responsibility and demonstrated ability to ensure rate comparability.” *In the Matter of Federal-State Joint Board on Universal Service*, 17 FCC Rcd 20716, 20728 (2002).¹⁵ Support is intended to ensure reasonable comparability of intrastate rates, and states have primary jurisdiction in that area. *Id.* at 20734; *In the Matter of Federal-State Joint Board on Universal Service*, 12 FCC Rcd at 8842.

Hence, for a state to ensure rate comparability, it must review the rates of all ETCs it has certified. Absent such a comparison, the states have failed to meet their obligation to ensure that ETCs are using the funds to “achieve the goals of [TA '96.]” *In the Matter of Federal-State Joint Board on Universal Service*, 17 FCC Rcd at 20739. Therefore, NPCR (and any other ETC that comes before the Commission) must expect to have its tariffs examined.

This does not constitute the regulation of “the entry of or rates charged” by a wireless carrier. 47 U.S.C. §332(c)(3)¹⁶. Numerous courts have noted that even the imposition of a mandatory contribution to a state USF does not amount to rate regulation when applied by a state Commission to a wireless carrier. *TOPUC*, 183 F.3d at 431-432, *citing Sprint Spectrum L.P. v. State Corp. Commission*, 149 F.3d 1058, 1061 (10th Cir 1998). Instead, this has been widely described as falling under the category of “other terms and conditions” that a state Commission may regulate regarding wireless carriers. 47 U.S.C. §332(c)(3).

¹⁵ While the FCC made this decision in the context of non-rural rates, the analysis holds

¹⁶ States may, in fact, regulate the rates and entry of wireless carriers where they have replaced most of the wireline carriers in a market. However, that is not the case at bar

In response to the question of whether the Commission may impose additional requirements on an ETC in the protection of the public interest, NPCR asserted that it is “concerned about non-applicable rules...[that] would get in the way of providing the service to our customers and the whole objective of expanding the network and providing excellent service to customers.” Tr. at p. 107. However, NPCR properly recognizes the obligation of financial oversight, as reflected in the testimony of Mr. Wood, stating that the Commission must look “very carefully” at how ETCs of all stripes have spent the allocated funds. Tr. at 140-41. He goes on to say:

My experience has been that these support dollars don't represent total expenditures, that when they're available, they make a business case for rural entry that wasn't there before and that private capital follows them. So a hundred thousand in support might yield 3 million in new investment in those areas that now has a business case, that gets it over the hump.

Id.

While NPCR is correct in its assertion that the Commission does not regulate NPCR's rates, the Commission *does* have an affirmative duty to oversee the rates of ETCs, especially regarding Lifeline/Linkup tariffs. Without such oversight, the Commission cannot be assured that a carrier is not using its ETC status to competitive – and public – disadvantage. “An ETC is obliged, at the risk of financial sanctions, to serve designated customers at appropriate prices.” 47 U.S.C. §214(d). State utility commissions are required to “determine which common carrier or carriers are best able to provide such service to the requesting unserved community or portion thereof ..” 47 U.S.C. §214(e)(3); *GCC License Corp.*, 623 N.W. 2d at 477.

Given this determination, we find that all ETCs are subject to the filing of Lifeline/Linkup tariffs, regardless of technology. This satisfies the requirement of competitive neutrality, as requiring wireline carriers to file such tariffs while exempting wireless carriers would work an inability to properly measure the marketplace of universal service.¹⁷ The Commission cannot reasonably fulfill its statutory mandate to ensure that universal service is available at rates that are “just, reasonable, and affordable” without such filings. 47 U.S.C. §254(i). Further, this is not a requirement that is so “restrictive,”¹⁸ to use NPCR's term, that it prohibits would-be entrants from entering the market. It is, in fact, regulation with a light hand.

Consistent with this duty, we also find that ETC applicants should affirmatively present what accounting protocols will be used to track and account for USF expenditures. The designation of an ETC creates both benefits and burdens on a telecommunications provider. While it gives the right to apply for USF funds, it also creates the concomitant requirement that such support be used “only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.” 47 U.S.C. §254(e). In addition, the subsidy of competitive services by non-competitive services is prohibited in the provision of universal service. 47 U.S.C. §254(j). The Commission is charged with the obligation of establishing such

¹⁷ *In the Matter of Federal-State Joint Board on Universal Service*, 17 FCC Rcd 22642 n 4 (2002)

¹⁸ Tr. at 139-40

“necessary cost allocation rules, accounting safeguards, and guidelines” to ensure that USF-funded services bear no more than a reasonable cost of the joint and common cost. *Id.* Without such oversight, the Commission cannot assure that NPCR, or any other ETC, is using USF funds in a manner consistent with the statutory mandate. We find that the requirement of tariff-filing and presentation of accounting protocols meet this definition and should be required of all ETCs under our jurisdiction.

Consistent with these requirements, we find that NPCR shall file reports with the Commission detailing its progress in the expansion and upgrading of service. Specifically, NPCR shall file its first report six (6) months from the date of this order, and annually thereafter, setting out the following:

- Its specific plan using USF funds for the “provision, maintenance and upgrading of facilities and services;
- Areas where signal strength is to be improved, with corresponding footprint redefinition;
- Timetable for implementation of new switches, towers, and all improvements to service that are set to be started on a date certain;
- Current status of previously reported projects and timelines;
- Number of complaints filed by Indiana customers with the FCC, IURC, or other regulatory entities;
- Number of requests for service in its designated Indiana service area that were unable to be completed due to lack of facilities or signal.

To the extent that such reports contain confidential matter that constitute trade secrets as defined under Indiana law, NPCR (and any future ETC subject to our jurisdiction) may request confidential treatment pursuant the Commissions’ then-current policies.

d. Competition

Universal service and competition must be balanced; one must not be sacrificed to supplant or benefit the other. *Washington Independent Telephone Assn. v. Washington Utilities and Trans Comm.*, 149 Wn.2d 17, 27, 65 P.3d 319, 324 (2003), citing *Alenco Communications, Inc. v. FCC*, 201 F.3d 608, 615 (5th Cir. 2000); see also *Washington Independent Telephone Assoc. v. Washington Utilities and Transportation Comm.*, 110 Wn. 498, 516, 41 P.3d 1212 (2002), citing *In the Matter of Federal-State Board on Universal Service*, 12 FCC Rcd at 8801-03; *In the Matter of Federal-State Joint Board on Universal Service*, 13 FCC Rcd at 5365. The purpose of the public interest requirement is not to protect rural telecommunications companies from competition, “but to ensure that rural areas receive the same benefits as urban areas.” *In re the Application No. C-1889 of GCC License Corp. (Western Wireless)*, 264 Neb. 167, 172, 647 N.W.2d 45, 50 (2002) State commissions are granted the authority to determine whether

such certification is in the public interest. *In the Matter of Federal-State Joint Board on Universal Service*, 15 FCC Rcd 15168, 15184 n.6 (2000).

In fact, competition is but one element of the bundle that is universal service. TA '96 identified that competition is the only way to open the market and broaden the available choices to consumers. However, it is a means to an end – not the end itself. An examination of competition as it relates to CETCs must focus on whether the competitive force created by the certification of a particular carrier will benefit consumers by furthering the purpose of universal service.

The OUCC and Intervenors introduced evidence that competition for wireless service is not lacking in rural Indiana, with most areas already having access to competitive services from a number of different wireless service providers. Therefore, there was conflicting evidence on the issue of whether designating NPCR as an additional ETC in its proposed ETC service areas would actually increase the level of competition in Indiana. NPCR testified that the intervenors in this case had tried to make this cause “about competition,” shifting the focus from the proper inspection of NPCR’s specific petition for ETC status. Tr. at 113. As Mr. Wood stated, “it should be specific to the company’s application and to the areas in question. It’s not really a question of should we have competition.” Tr. at 137.

NPCR properly recognizes that the public interest inquiry does not focus on what is best for an individual carrier, but what the impact on consumers will be. Tr. at 132. Indiana has telephone service available in all areas, and by NPCR’s own admission there are at least three or more competitive wireless carriers in all rural areas of Indiana.¹⁹ Tr. at 79. Hence, if we certify NPCR, we are not introducing service to previously unserved areas. If that were the test, no ETCs could be designated hence in Indiana. However, “the purpose of the public interest requirement of 47 U.S.C. §214(e) [is] not to protect rural telecommunications companies from competition but to ensure that rural areas receive the same benefits as urban areas.” *In re Application No. C-1889 of GCC License Corp. (Western Wireless)*, 647 N.W.2d at 50.

The Act only promises universal service, and that is a goal that requires sufficient funding of *customers*, not *providers*. So long as there is sufficient and competitively-neutral funding to enable all customers to receive basic telecommunications services, the FCC has satisfied the Act and is not further required to ensure sufficient funding of every local telephone provider as well. Moreover, excessive funding may itself violate the sufficiency requirements of the Act. Because universal service is funded by a general pool subsidized by all telecommunications providers – and thus indirectly by the customers – excess subsidization in some cases may detract from universal service by causing rates

¹⁹ Seventy-five percent of the population has access to five or more wireless carriers, as stated by the FCC. *In the Matter of Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, 16 FCC Rcd 13350, 13355 (2001). The FCC goes on to note that due to the cap on frequency spectrums, “there are at least four different licensees in every market, and as a practical matter, there are generally five or more licensees in every market.” *Id* at 13361.

unnecessarily to rise, thereby pricing some consumers out of the market... 'Sufficient' funding of the customer's right to adequate telephone service can be achieved regardless of which carrier ultimately receives the subsidy.

Alenco, 201 F.3d at 620-21 (emphasis in original).

As such, we must make a determination of whether NPCR's petition meets these various hurdles. This goes hand-in-hand with the requirement that an applicant show what it would do with the funds, if received. The oversight of public impact, in the form of potentially higher fees to consumers, or lower amounts to competitors, is within the purview of this Commission, and without this evidence our analysis cannot be complete.

If granted, NPCR has committed to becoming a carrier providing ubiquitous service in the designated areas – thereby extending the benefits known in urban areas to their rural counterparts. This is the promise that was made when the market was opened to competition – that additional carriers would enter the market with service alternatives. Further, NPCR provided an estimate that ETC designation would bring approximately \$13,000.00 per month, or \$156,000.00 per year. Tr. at 81. When that amount is placed in the context of NPCR's testimony that every dollar of USF money is more than matched by a carrier, this represents a significant investment in Indiana's telecommunications network, especially in rural areas. Such network extension has the potential for improvements by other carriers, as they compete for the public's business – the benefit of competition at its best.

Similarly, NPCR presented evidence that the certification of an Indiana CETC would have very low impact on Indiana consumers – that the change to the USF factor would have “to go out to seven or eight decimal places to find an impact from the designation of CETCs.” Tr. at 120. While NPCR maintains that an examination of fund impact is inappropriate for the Commission in this proceeding²⁰ (a statement with which we disagree), NPCR nonetheless came prepared to discuss the impact its designation might have on the USF fund. No less is to be expected from any ETC applicant. The potential impact on the USF is a topic properly before this Commission in its determination of whether an applicant's designation is in the public interest, and is part of the balancing the Commission must do when viewing the application through the lens of competition. We find that NPCR's commitment to expand its network, cure “dead spots” and become a reliable carrier of last resort is in the public interest, as well as its promise to provide the Commission with appropriate documentation on the utilization of funds. Their testimony shows a concerted effort to identify and remove impediments to service that is truly universal within the proposed areas.

e. Other Factors

There are other factors that make granting NPCR's petition in the public interest. At this juncture, NPCR is currently the carrier of choice for “over 10 Indiana colleges, public school and libraries, and local, state and federal government agencies, specifically law enforcement.” NPCR Petition, ¶8.D. Given the explicit direction that school and libraries receive support in the

²⁰ Tr. at 119

context of universal service, supporting a carrier of choice in its attempt to expand and improve its network logically follows. Further, nothing can be closer to the heart of the public interest than improving service for those who serve in law enforcement. We need not belabor the point that of all subscribers, law enforcement needs consistent coverage and service. Hence, supporting the network of NPCR in increasing its signal, expanding its coverage, and improving its network is clearly in the public interest, in that it serves state, local, and federal government – the servants of the people.

IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that:

1. NPCR's application for designation as an Eligible Telecommunications Carrier ("ETC"), as that term is defined in 47 U.S.C. 214(e) and FCC Order 97-157, is hereby GRANTED.

2. NPCR's request for authority to apply for or receive federal universal service funds pursuant to 47 U.S.C. 254 is hereby GRANTED.

3. This Order shall be effective on and after the date of its approval.

McCARTY, HADLEY, LANDIS, RIPLEY AND ZIEGNER CONCUR:
APPROVED:

MAR 17 2004

I hereby certify that the above is a true
and correct copy of the Order as approved.


Mary M. Becerra
Acting Secretary to the Commission

PETITIONER'S EXHIBIT 7
(LATE FILED)

Designated Areas for which Nextel Partners
seeks ETC designation in this Petition

*Study areas and exchanges with lines through them were included within the Petition
but have been withdrawn by the Company*

1. Rural Telephone Company Study Areas

320742	BLOOMINGDALE HOME
320753	CLAY CTY RURAL COOP
320759	DAVISS-MARTIN/RTC
320776	COMM CORP OF INDIANA
320778	HOME TEL CO INC
320792	MULBERRY COOP TEL CO
320801	CENTURYTEL OF ODOM
320807	PERRY-SPENCER RURAL
320809	COMM CORP OF S. IN
320816	S & W TEL CO
320818	SMITHVILLE TEL CO
320819	SE INDIANA RURAL
320828	FRONTIER-THORNTOWN
320830	TRI-COUNTY TEL CO
320834	WASHINGTON CTY RURAL
320837	WEST POINT TEL CO
320839	YEOMAN TEL CO, INC

2. Non-Rural ILEC Wire Centers

Verizon N. -- Indiana (SAC 320772)

BRKTINXA
BRZLINXB
CNVLINXA
CORYINXA
CTPNINXA
CYCYINXA
DNKRINXA
FTWYINXB
FTWYINXF
GNCSINXA
GRRTINXA
GSHNINXA
GYVLINXA
LAPTINXG
LBRTINXA
LEWSINXA
LFYTINXA
LFYTINXG
LFYTINXD
LFYTINXF
MRTNINXA
PKGNNXA
PRCKINXA
PRTGINXA
PRTGINXB
RILYINXA
SLLVINXA
TRRHINXA
TRRHINXB
TRRHINXC
TRRHINXD
TRRHINXE
TRRHINXF
VLPRINXA
WBSHINXA
WSFDINXA
WTRLINXA

Verizon N. - Indiana (Contel) (SAC 320779)

AUSTINXA
BRDSINXA
BRTWINXA
BTVLINXA
CENTINXA
COVLINXA
CRLSINXA
CRNDINXA
CYDNINXA
CYNTINXA
DCKRINXA
DUBSINXA
ELBRINXA
ELZBINXA
ENGLINXB
FDNDINXA
FMBGINXA
FRBGINXB
FRBNINXA
FRNCINXA
FTBRINXA
FTTNINXA
GRTWINXA
HEVLINXA
HGBGINXA
HNVRINXA
HYVLINXA
HZTNINXA
JSPRINXA
LACNINXA
LNVLINXA
LOGTINXA
LVWOINXA
LXTNINXA
LYVLINXA
MCKYINXA
MDSNINXA
MERMINXA
MLTWINXA
MNCYINXA
MRNGINXA
NWMLINXA
OKCYINXA
OKTWINXB

OWVLINXA
PAOLINXA
PLMYINXA
PRTNINXA
PTBGINXB
RDTNINXA
RMSYINXA
SALMINXA
SCBGINXA
SHLBINXA
SHLSINXA
SPRGINXA
STATINXA
SYMRINXA
WTLDINXA

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